
(2011) 07 CAL CK 0007

In the Calcutta High Court

Case No : M.A.T. 739 of 2010 with C.A.N. No. 6206 of 2010

Kalpana Barman

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

West Bengal Board of Secondary Education (Examination) Regulations, 2001 —
Regulation 13(6)

Citation : (2011) 5 CHN 687

Hon'ble Judges : Shukla Kabir (Sinha), J; Pranab Kumar Chattopadhyay, J

Bench : Division Bench

**Advocate : Debabrata Roy, for the Appellant; Dilip Saha for respondent No. 7
and Tapan Kumar Mukherjee, for the Respondent**

Final Decision : Allowed

Judgement

Re: C.A.N. 6206 of 2010

1. The appellant herein challenged the selection of the private respondent to the post of Auxiliary Nurse and Midwife by filing a writ petition which was ultimately dismissed by a learned Judge of this Court by the impugned judgment and order under appeal dated 14th January, 2009. Going through the records we find that the appellant herein was not considered for appointment to the aforesaid post of Auxiliary Nurse and Midwife by the members of the Selection Committee as the private respondent herein was adjudged more meritorious than the appellant herein.

2. The learned Counsel of the appellant submits that the members of the Selection Committee while selecting the candidates for the aforesaid post in question should have considered the merit of the candidates strictly on the basis of the total marks secured by them in the Madhyamik or equivalent examination.

3. The members of the Selection Committee adjudged the private respondent as the more meritorious candidate than the appellant herein inspite of securing

lesser marks as the said private respondent passed the School Final examination in her first attempt, whereas the appellant herein passed the said examination in her second attempt even though the appellant secured higher marks than the private respondent.

4. As per the declared norms, selection to the aforesaid post of Auxiliary Nurse and Mid wife should be made purely on merit based on the marks obtained by the candidates in the Madhyamik or equivalent examination. Therefore, the candidate securing higher marks should be preferred in the selection ignoring in how many attempts the concerned candidate secured such marks.

5. The learned Counsel representing the appellant submits that the appellant herein should have been preferred in the selection than the private respondent since the said appellant secured higher marks in the School Final examination.

6. Undisputedly, the recruitment norms do not provide in how many attempts a candidate secured the total marks in the Madhyamik or equivalent examination. As per the prescribed norms, merits of the candidates should be adjudged strictly on the basis of the marks obtained by the candidates in the Madhyamik or equivalent examination and not in how many attempts such marks were obtained.

7. The learned Single Judge while dismissing the writ petition by the judgment and order under appeal relied on a Single Bench decision of this court reported in 2007(3) WBLR (Cal) 315 which was, however, upset subsequently by the Division Bench of this Court in the appeal being M.A.T. 2414 of 2007 with C.A.N. 5928 of 2007 (Kalpana Sarkar (nee) Barman vs. State of West Bengal & Ors.). The Division Bench while setting aside the aforesaid judgment of the learned Single Judge observed:

Unfortunately, the recruitment norms do not provide in how many attempts candidates concerned secured the total marks in the Madhyamik or equivalent examinations. As per the prescribed norms the merits of the candidates were required to be adjudged on the basis of the marks obtained by the candidates in the Madhyamik or equivalent examination and not in how many attempts such marks were obtained. In the event, more than one candidates secured the same marks then only question of number of attempts could be taken into consideration, otherwise the candidates who secured higher marks must be preferred than the candidates who secured lesser marks.

The Examination Regulations of the West Bengal Board of Secondary Education (Examination) Regulations, 2001 also specifically provides that a compartmental candidate after securing qualifying marks in the subject would be eligible for pass mark in the Group and should also be declared pass with Division after taking into account the marks in other subjects/ groups of previous examination. Regulation 13(6) of the Examination Regulations of the West Bengal Board of Secondary Education (Examination) Regulations, 2001 is quoted hereunder:

13. Provisions for issuing admit card, mark-sheet and other certificates.--

- (1).....
- (2).....
- (3).....
- (4).....
- (5).....

(6) A compartmental candidate when securing qualifying marks in the subject be eligible for pass mark in Group be declared pass with Division after taking into account the marks in other subjects/groups of previous examination so that mark-sheet and certificate be issued accordingly....."

The aforesaid Examination Regulations thus specifically provides that a compartmental candidate after securing the qualifying marks would be declared not only pass but also get the Division after taking into account of the marks obtained in the other subjects/groups of the previous examination.

8. In the present case, the appellant herein admittedly, secured higher marks than the private respondent in the School Final examination and therefore, as per the declared Recruitment norms, said appellant should be adjudged as more meritorious candidate than the private respondent herein.

9. For the aforementioned reasons and in view of the earlier decision of the Division Bench of this Court in the case of Kalpana Sarkar (nee) Barman vs. State of West Bengal & Ors. (M.A.T. 2414 of 2007 with C.A.N. 5928 of 2007), the selection and appointment of the respondent No. 7 to the post of Auxiliary Nurse and Midwife cannot be sustained and the same is, therefore, quashed.

10. The respondent authorities are directed to appoint the appellant herein in place of the private respondent to the post of Auxiliary Nurse and Midwife at Karnojora Sub Health Centre under Tapan block without any further delay but positively within a period of two weeks from the date of communication of this order.

11. Needless to mention that after such appointment, appellant herein will undergo the prescribed training before joining the post in question and the respondent authorities will issue necessary order in this regard so that the appellant can join the training without any further delay.

12. With the aforesaid directions, we set aside the impugned judgment and order under appeal passed by the learned Single Judge and allow the appeal as well as the connected application without awarding any costs. Let a xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the learned Advocates of the respective parties on usual undertaking.